

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LENWOOD E. MORGAN,)	CASE NO. 1:12 CV 2777
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	MAGISTRATE JUDGE
)	WILLIAM H. BAUGHMAN, JR.
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	<u>REPORT & RECOMMENDATION</u>
Defendant.)	

This matter comes before the Magistrate Judge by automatic reference of administrative action¹ for review of the decision of the Commissioner of Social Security denying plaintiff Lenwood Morgan's applications for Social Security disability insurance benefits and supplemental security income.²

On November 14, 2012, the Court filed the Magistrate Judge's Initial Order setting forth the procedural schedule for the filing of the answer, transcript, and fact sheet.³ On January 15, 2013, defendant Commissioner of Social Security filed a motion to dismiss case.⁴ On February 15, 2013, the Court entered a marginal entry order requiring Morgan to file his response to the Commissioner's motion to dismiss on or before March 18, 2013.⁵

¹ Non-document docket entry of November 8, 2012.

² ECF # 1.

³ ECF # 5.

⁴ ECF # 11. The Commissioner moves to dismiss for failure to timely commence the action under 42 U.S.C. § 405(g).

⁵ ECF # 13.

On April 3, 2013, the Court filed a show cause order requiring a response from Morgan by April 10, 2013, as to why the complaint should not be dismissed for want of prosecution.⁶ Neither Morgan's response to the show cause order nor a response to the Commissioner's motion to dismiss has been received as of this date.

I have reviewed the Commissioner's motion to dismiss and the exhibits attached. Based on that review, I find that Morgan did not timely commence this action under 42 U.S.C. § 405(g) and that no circumstances justify the equitable tolling of the period of limitations in that statute. In support of this finding, I incorporate by reference the facts and legal analysis set forth in the Commissioner's brief in support of the motion to dismiss.⁷

On consideration whereof, I recommend that this case be dismissed as untimely filed.

Dated: May 10, 2013

s/ William H. Baughman, Jr.
United States Magistrate Judge

Objections

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.⁸

⁶ ECF # 14.

⁷ ECF # 11.

⁸ See *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also *Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).